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CITY AND COUNTY OF SAN FRANCISCO

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BOARD OF TRUSTEES LABORERS'
TRAINING AND RETRAINING FUND
FOR NORTHERN CALIFORNIA,

Plaintiff,

vs.

LABORERS' INTERNATIONAL
UNION OF NORTH AMERICA LOCAL
UNION NO 261, ET AL.,

Defendants.

Case No. C 07-6436 SC

**ANSWER TO COMPLAINT BY
DEFENDANT CITY AND COUNTY OF
SAN FRANCISCO**

Defendant City and County of San Francisco ("defendant" or "City"), of which the Department of Public Works is a constituent part, answers plaintiff's complaint for damages for breach of collective bargaining agreement, to recover unpaid trust fund contributions and for breach of fiduciary duty, as follows:

1. Responding to paragraph 1, defendant denies liability for the claims asserted by plaintiffs, and denies that the Court has jurisdiction over defendant under the Labor Management Relations Act of 1947 ("LMRA") or the Employment Retirement Income Security Act ("ERISA") but admits that plaintiffs have purported to sue under the provisions of the LMRA, and ERISA. Except as expressly admitted, defendant denies each and every allegation in paragraph 1.

1 2. Responding to paragraph 2, defendant denies liability for the claims asserted by
2 plaintiffs, but admits that venue of the action is proper in the U.S. District Court for the Northern
3 District of California. except as expressly admitted, defendant denies each and every allegation
4 in paragraph 2

5 3. Responding to paragraph 3, defendant is without sufficient knowledge or
6 information regarding the nature of the plaintiff organization and on that basis denies the
7 allegations of paragraph 3.

8 4. Responding to paragraph 4, defendant is without sufficient knowledge or
9 information regarding the nature or duties of the plaintiff organization and on that basis denies
10 the allegations of paragraph 4.

11 5. Responding to paragraph 5, defendant is without sufficient knowledge or
12 information regarding the legal relationship of the plaintiff organization and defendant Local 261
13 and on that basis denies the allegations of paragraph 5.

14 6. Responding to paragraph 6, defendant denies each and every allegation.

15 7. Responding to paragraph 7, defendant incorporates by reference its responses to
16 paragraphs 1 through 6 of the Complaint as if fully set forth herein.

17 8. Responding to paragraph 8, defendant admits that shortly on or around June 28,
18 2005, the Board of Supervisors passed an ordinance adopting and implementing Amendment No.
19 2 to the 2003-2006 Memorandum of Understanding between the City and County of San
20 Francisco and Local 261, by implementing provisions related to the Department of Public Works
21 – Laborers Apprenticeship Project to be effective July 1, 2005. Defendant further admits that it
22 and Local 261 are parties to the Memorandum of Understanding. Except as expressly so
23 admitted, defendant denies the allegations of paragraph 8.

24 9. Responding to paragraph 9, defendant admits that pursuant to Amendment No. 2,
25 defendant and Local 261 agreed to amend their Memorandum of Understanding, subject to
26 approval by the Board of Supervisors, to provide compensation for employees actively enrolled
27 in the Laborers Apprenticeship Project, and to allocate funds with respect to employees
28

1 participating in the Apprenticeship Project. Except as expressly so admitted, defendant denies
2 the allegations of paragraph 9.

3 10. Responding to paragraph 10, defendant admits that pursuant to Amendment No.
4 2, defendant and Local 261 agreed to amend their Memorandum of Understanding, subject to
5 approval by the Board of Supervisors, to allocate funding to Local 261 with respect to employees
6 participating in the Apprenticeship Project, and that such funds would be used by the Union to
7 provide funding for the Project training program, including administrative costs and training-
8 related expenses. Defendant is without sufficient knowledge or information regarding the intent
9 of Local 261 in accepting funds, and on that basis denies the allegations of the second sentence
10 of paragraph 10. Except to the extent expressly admitted, or denied based on lack of knowledge
11 or information, defendant denies the allegations of paragraph 10.

12 11. Responding to paragraph 11, defendant is without sufficient knowledge or
13 information and on that basis denies the allegations of paragraph 11.

14 12. Responding to paragraph 12, defendant is without sufficient knowledge or
15 information and on that basis denies the allegations of paragraph 12.

16 13. Responding to paragraph 13, defendant is without sufficient knowledge or
17 information and on that basis denies the allegations of paragraph 13.

18 14. Responding to paragraph 14, defendant denies that it was required to submit
19 payment under the MOU to plaintiff. Defendant is without sufficient knowledge or information
20 as to what payment plaintiff might have received from Local 261, accordingly defendant denies
21 the allegations of paragraph 14.

22 15. Responding to paragraph 15, defendant denies each and every allegation.

23 16. Responding to paragraph 16, defendant denies each and every allegation and
24 denies that it has become indebted to plaintiff in the amount of \$88,244.00 or any other amount.

25 17. Responding to paragraph 17, defendant incorporates by reference its responses to
26 paragraphs 1 through 17 of the Complaint as if fully set forth herein.

27 18. Responding to paragraph 18, defendant denies each and every allegation.

28 19. Responding to paragraph 19, defendant denies each and every allegation.

1 20. Responding to paragraph 20, defendant is without sufficient knowledge or
2 information as to what payment plaintiff might have received from Local 261, accordingly
3 defendant denies the allegations of paragraph 20.

4 21. Responding to paragraph 21, the allegations in this paragraph are statements of
5 plaintiffs' legal intent or legal conclusions and are not factual allegations requiring admissions or
6 denials by defendant and, thus, defendant neither admits nor denies those allegations. To the
7 extent any response is required, defendant denies each and every allegation in paragraph 21.

8 22. Responding to paragraph 22, the allegations in this paragraph are statements of
9 plaintiffs' legal intent or legal conclusions and are not factual allegations requiring admissions or
10 denials by defendant and, thus, defendant neither admits nor denies those allegations. To the
11 extent any response is required, defendant denies each and every allegation in paragraph 22.

12 23. Responding to paragraph 23, defendant incorporates by reference its responses to
13 paragraphs 1 through 23 of the Complaint as if fully set forth herein.

14 24. Responding to paragraph 24, defendant is without sufficient knowledge or
15 information as to the allegations of the paragraph, accordingly defendant denies the allegations.

16 25. Responding to paragraph 25, defendant is without sufficient knowledge or
17 information as to the allegations contained in the first sentence of the paragraph, accordingly
18 defendant denies the allegations. As to the allegations of the second sentence of the paragraph,
19 defendant denies each and every allegation.

20 26. Responding to paragraph 26, defendant denies each and every allegation.

21 27. Responding to paragraph 27, defendant is without sufficient knowledge or
22 information as to the allegations of the paragraph, accordingly defendant denies the allegations.

23 28. Responding to paragraph 28, defendant denies each and every allegation.

24 29. Paragraphs 29 through 34 of the Complaint are allegations of the Fourth Claim for
25 Relief, against Local 261, and not against the City. Therefore no response is required.

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PRAYER FOR RELIEF

Responding to plaintiff's prayer for relief, defendant denies that plaintiff has been injured or has suffered any damages, and denies that plaintiff is entitled to any relief requested in paragraphs 1 through 5 of the Prayer for Relief or any relief in any amount or of any kind whatsoever.

AFFIRMATIVE DEFENSES

First Affirmative Defense

As a first affirmative defense, defendant asserts that plaintiff's complaint fails to state facts sufficient to constitute a claim for relief against defendant.

Second Affirmative Defense

As a second affirmative defense, defendant asserts that Plaintiff has failed to exhaust its administrative and/or contractual remedies.

Third Affirmative Defense

As a third affirmative defense, defendant asserts that the Complaint, and claims for relief therein, are barred by the doctrine of unclean hands.

Fourth Affirmative Defense

As a fourth affirmative defense, defendant asserts that plaintiff is estopped by its conduct from asserting any claims herein against defendant.

Fifth Affirmative Defense

As a fifth affirmative defense, defendant asserts that plaintiff's claim for breach of contract is barred because plaintiff failed to perform under the alleged contract.

WHEREFORE, Defendant prays for judgment as follows:

1. That judgment be awarded for defendant City and County of San Francisco;
2. That plaintiffs' prayer for monetary damages, liquidated damages, costs, attorney's fees, interest, accounting and declaratory judgment be denied;

